

WARREN GARY)	
)	
Claimant-Petitioner)	
)	
v.)	
)	
NEWPORT NEWS SHIPBUILDING AND)	DATE ISSUED: 10/21/2005
DRY DOCK COMPANY)	
)	
Self-Insured)	
Employer-Respondent)	DECISION and ORDER

Appeal of the Order on Petition for Attorney's Fees of Larry W. Price,
Administrative Law Judge, United States Department of Labor.

Gregory E. Camden and Charlene Parker Brown (Montagna Klein Camden,
LLP), Norfolk, Virginia, for claimant.

Benjamin M. Mason (Mason, Mason, Walker & Hedrick, P.C.), Newport
News, Virginia, for self-insured employer.

Before: DOLDER, Chief Administrative Appeals Judge, SMITH and
BOGGS, Administrative Appeals Judges.

PER CURIAM:

Claimant appeals the Order on Petition for Attorney's Fees (03-LHC-2413) of
Administrative Law Judge Larry W. Price rendered on a claim filed pursuant to the
provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33
U.S.C. §901 *et seq.* (the Act). The amount of an attorney's fee award is discretionary and
will not be set aside unless shown by the challenging party to be arbitrary, capricious, an
abuse of discretion or not in accordance with the law. *Muscella v. Sun Shipbuilding &
Dry Dock Co.*, 12 BRBS 272 (1980).

Claimant suffered an injury to his left knee on February 12, 2001, while working
for employer. Employer voluntarily paid claimant temporary total disability benefits, but
controverted claimant's claim for permanent partial disability compensation due to an
impairment of his left lower extremity. However, the parties ultimately agreed as to the
degree of permanent impairment sustained by claimant, and their agreement was

documented in signed stipulations submitted to the administrative law judge. Pursuant to the parties' stipulations, the administrative law judge issued an Order on Stipulations awarding claimant temporary total and permanent partial disability compensation.

Claimant's counsel subsequently submitted a petition to the administrative law judge seeking an attorney's fee of \$2,783.75, representing 8.8 hours of legal services rendered by senior counsel at an hourly rate of \$225, 4.5 hours of legal services at an hourly rate of \$160 rendered by associate counsel, and 1.75 hours at \$80 per hour for paralegal services. In response, employer challenged its liability for a fee; alternatively, employer challenged both the hourly rate and the number of hours sought by counsel. In his Order on Petition for Attorney's Fees, the administrative law judge found employer liable for the fee but he disallowed or reduced the time requested for several entries and he reduced the requested hourly rate for claimant's senior counsel from \$225 to \$185. Accordingly, the administrative law judge awarded claimant's counsel an attorney's fee of \$1,683, representing 7.8 hours for services performed by senior counsel at \$185 per hour, one hour of services performed by an associate at \$160 per hour, and one hour of services performed by counsel's paralegal staff.

On appeal, claimant challenges only the administrative law judge's reduction in his senior counsel's hourly rate. Employer responds, urging affirmance.

In support of his position that the administrative law judge erred in reducing senior counsel's hourly rate, claimant asserts that counsel has previously established his entitlement to an hourly rate of \$225 and that such an hourly rate is reasonable for the Hampton Roads area. In this regard, claimant contends that the administrative law judge erred in taking into consideration Altman and Weil's *THE SURVEY OF LAW FIRM ECONOMICS* (2002) in awarding a fee based on an hourly rate of \$185, since the United States Court of Appeals for the Fourth Circuit, within whose jurisdiction this case arises, has held that an hourly rate of \$225 is reasonable for this geographic area. *See Newport News Shipbuilding & Dry Dock Co. v. Brown*, 376 F.3d 245, 38 BRBS 37(CRT) (4th Cir. 2004).

The administrative law judge has broad discretion in awarding of an attorney's fee and the party challenging the reasonableness of an attorney's fee award bears the burden of showing that the award is contrary to law or is arbitrary, capricious, or an abuse of discretion. *See generally Forlong v. American Security & Trust Co.*, 21 BRBS 155 (1988). It is the administrative law judge's responsibility to review the fee petition and determine whether the fee requested is reasonably commensurate with the necessary work done. In awarding a fee, he must take into account the quality of the representation, the complexity of the legal issues involved, and the amount of benefits awarded. 20 C.F.R. §702.132; *Muscella*, 12 BRBS 272.

Citing the Fourth Circuit's decision in *Brown*, 376 F.3d 245, 38 BRBS 37(CRT), the administrative law judge acknowledged that counsel may demonstrate the prevailing market rates in the relevant community by reference to recent fee awards in comparable cases. The administrative law judge found that claimant had provided him with such cases documenting an awarded hourly rate of \$225, while employer in response had provided a survey indicating that a lower hourly rate was warranted. Taking into consideration the issues involved in this case, the degree of skill with which claimant was represented by counsel, the amount of time involved, and other relevant factors, the administrative law judge concluded that an hourly rate of \$185 is reasonable for the services performed by claimant's senior counsel.

We reject claimant's contentions of error. While the rates awarded to counsel in other cases are relevant to the rate he seeks in a given case, *Brown*, 376 F.3d 245, 38 BRBS 37(CRT), the administrative law judge is not bound by those awards. Rather, the administrative law judge is in the unique position of assessing the amount of a reasonable fee. *See Barbera v. Director, OWCP*, 245 F.3d 282, 35 BRBS 27(CRT) (3^d Cir. 2001). Inasmuch as the administrative law judge addressed the relevant factors, *see* 20 C.F.R. §702.132, and claimant has not met his burden of showing that the \$185 hourly rate awarded is unreasonable or that the administrative law judge abused his discretion in this regard, it is affirmed. *See Parks v. Newport News Shipbuilding & Dry Dock Co.*, 32 BRBS 90 (1998), *aff'd mem.* 202 F.3d 259 (4th Cir. 1999)(table).

Accordingly, the administrative law judge's Order on Petition for Attorney's Fees is affirmed.

SO ORDERED.

NANCY S. DOLDER, Chief
Administrative Appeals Judge

ROY P. SMITH
Administrative Appeals Judge

JUDITH S. BOGGS
Administrative Appeals Judge